MT LEGISLATIVE HISTORY

Chapter 606 1985

Bill (H) 700 S _____ Original bill & hist. ___C

H. Committee on Judiciary S. Committee on Judiciary

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Feb 18	✓C	Hearing Date(s) Mar 15	✓C
_____	___C	Mar 20	✓C
_____	___C	Mar 26	✓C
_____	___C	Mar 28	✓C
Date Out Feb 18	✓C	Mar 28	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HOUSE BILL NO. 700

INTRODUCED BY MERCER

IN THE HOUSE

February 7, 1985	Introduced and referred to Committee on Judiciary.
February 18, 1985	Committee recommend bill do pass as amended. Report adopted.
	Bill printed and placed on members' desks.
February 20, 1985	Second reading, do pass.
	Considered correctly engrossed.
February 21, 1985	Third reading, passed.
	Transmitted to Senate.

IN THE SENATE

February 22, 1985	Introduced and referred to Committee on Judiciary.
March 28, 1985	Committee recommend bill be concurred in as amended. Report adopted.
March 30, 1985	Second reading, concurred in.
April 1, 1985	Third reading, concurred in. Ayes, 41; Noes, 7.
	Returned to House with amendments.

IN THE HOUSE

April 2, 1985	Received from Senate.

April 8, 1985

Second reading, amendments concurred in.

On motion, rules suspended and bill placed on third reading this day.

Third reading, amendments concurred in.

Sent to enrolling.

Reported correctly enrolled.

House BILL NO. 700

INTRODUCED BY Mercer

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING PLEA BARGAIN AGREEMENTS; REQUIRING GOOD CAUSE TO BE SHOWN BEFORE A FELONY CHARGE IS DISMISSED; AMENDING SECTIONS 46-12-204 AND 46-13-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-12-204, MCA, is amended to read:

"46-12-204. The plea -- plea bargains. (1) The defendant shall enter a plea of guilty or not guilty to the indictment, information, or complaint. If the defendant refuses to plead to the indictment, information, or complaint, a plea of not guilty must be entered.

(2) The court may refuse to accept a plea of guilty and shall not accept the plea of guilty without first determining that the plea is voluntary with an understanding of the charge.

(3) (a) A plea bargain agreement between a defendant and a prosecutor is an agreement that in exchange for a particular plea the prosecutor will recommend to the court a particular sentence. A judge may not participate in the making of, and is not bound by, a plea bargain agreement. If a judge does not impose a sentence recommended by a prosecutor pursuant to a plea bargain agreement, the judge is not required to allow the defendant to withdraw a plea of guilty.

(b) Before a judge accepts a plea of guilty, he must advise the defendant of all the provisions of subsection (3)(a) and that he may impose any sentence allowed by law."

Section 2. Section 46-13-201, MCA, is amended to read:

"46-13-201. Dismissal at instance of court or prosecution. (1) The court may, either on its own motion or upon the application of the attorney prosecuting and in furtherance of justice, order ~~an--action,~~ a complaint, information, or indictment to be dismissed; however, the court may not order a dismissal of a complaint, information, or indictment, or a count contained therein, charging a felony, unless good cause for dismissal is shown. ~~The~~ and the reasons ~~of~~ for the dismissal ~~must be~~ are set forth in an order entered upon the minutes. A plea bargain agreement is not by itself good cause for a dismissal.

(2) The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed if a defendant whose trial has not been postponed upon his application is not brought to trial within 6 months after entry of plea upon a complaint, information, or indictment charging a misdemeanor.

(3) An order for the dismissal of an action as

Montana Legislative Council

LC 1208/01

INTRODUCED BILL
HB 700

provided in this chapter is a bar to any other prosecution for the same offense if it is a misdemeanor, but it is not a bar if the offense is a felony."

-End-

(To be kept current -- post bills when entering being heard or leaving committee.) Form CS-32

STATUS SHEET

FORTY-NINTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
HB 681	2/5/85	2/8/85 2/7/85	2/8/85			2/8/85			
HB 186	2/5/85	2/7/85 2/8/85	2/8/85			2/8/85			
HB 686	2/6/85	2/22/85 2/23/85	2/23/85			2/23/85			
HB 700	2/7/85	2/18/85	2/18/85			2/18/85			
HB 706	2/7/85	2/18/85	2/18/85	2/18/85					
HB 710	2/7/85	2/18/85	2/18/85			2/18/85			
HB 712	2/7/85	2/18/85	2/18/85			2/18/85			
HB 714	2/7/85	2/18/85 2/20/85	(Tabled 2/20/85)		(Sent out to floor 2/25/85)				
HB 341	2/7/85	2/16/85 (re-referred)	2/16/85	2/16/85					
HB 717	2/8/85	2/19/85	2/19/85			2/19/85			
HB 722	2/8/85	2/19/85	2/19/85			2/19/85			
HB 726	2/8/85	2/19/85	2/19/85	2/19/85					
HB 447	2/8/85	(referred back to committee) 2/18/85				2/18/85			
HB 738	2/9/85	2/19/85	2/19/85			2/19/85			
HB 742	2/9/85	2/19/85	2/19/85		2/19/85				
HB 744	2/9/85	2/20/85	2/20/85	2/20/85					

Use separate sheet for

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 18, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Monday, February 18, 1985 at 7:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL NO. 329: Rep. Tom Hannah, House District #82, chief sponsor of H.B. 329, testified in its support. Rep. Hannah said that H.B. 329 is an ongoing attempt to define lien laws. Rep. Hannah informed the committee that a comprehensive bill which would revise all of the lien laws was introduced in the Senate. It was tabled with the idea that other compromising legislation would be worked out. Rep. Hannah submitted materials which were marked Exhibit A and hereto attached.

Rep. Gary Spaeth also testified as a proponent to H.B. 329. He stated that there are problems with the present lien laws, and something still has to be done in this area.

Larry Huss, attorney for Mountain Bell Telephone, testified in support of H.B. 329. He stated that the problem in dealing with liens is that an individual is always subject to the good faith of his contractor. If the contractor has financial problems, he may deal with the person with less than full disclosure. That person has no way, short of asking the contractor, of knowing who all the suppliers are and whether or not they are being paid. He believes the bill creates a climate that goes from one extreme to the other which would place a burden on the supplier. Mr. Huss suggested a provision be made for some sort of notice from the supplier to the homeowner or to the owner of the project in order that there be actual knowledge by both parties pointing out who is involved in the contract; thus, each side is able to protect himself by giving notice and communicating as to what the bill will be in order to insure that the payment is made before the final disbursement of the loan contract is announced. Mr. Huss submitted an amendment to H.B. 329 which deals with actual notice. The amendment was marked as Exhibit B and attached.

There being no further proponents, Vice-Chairman Dave Brown asked the opponents to testify.

Irvin E. Dellinger, executive secretary of the Montana Building Materials Dealer's Association, appeared and urged the committee to either kill or table this bill.

The floor was opened for a questioning period.

Rep. Keyser wanted to know, because the bill is retroactive, how many cases are we talking about that the Department of Administration has had before the courts from July 1, 1977 to present. Mr. Young responded by saying the reason that this goes back to 1977 is because that's when the first limitation of liability was enacted by the legislature, this was then declared unconstitutional in the Karla White case because of the economic, non-economic damage extension. He said that the department has had approximately 910 claims in this time period of which 150 are currently in court. Out of that 910, approximately 300 of those are still claims that could be filed in district court. We have roughly 500 accident incidents or potential claims every year. He further stated that this also covers local government.

There being no additional questions, hearing closed on H.B. 714.

CONSIDERATION OF HOUSE BILL NO. 700: Rep. John A. Mercer, House District #50, sponsor of H.B. 700, testified. He stated that H.B. 700 is a plea bargain bill. He informed the committee that there is nothing in the present code books dealing with plea bargains at all. Rep. Mercer referred to a supreme court case (State vs. Cavanaugh) in 1982 which established a rule of criminal procedure that section 1 of this bill is attempting to overturn. Rep. Mercer feels the bench should be independent and separate from a plea bargain. A plea bargain doesn't involve the judge -- it is an agreement between the prosecutor and the defense which in turn take their chances before the court.

Mike McGrath, Lewis and Clark County Attorney, stated that the mood of the county attorney's association is to support this bill. He pointed out that 96% of the cases filed are settled through the plea bargaining process. Because of the numerous criminal cases which are filed, plea bargaining is very necessary. Mr. McGrath did point out that he had a problem with the language on page 2, lines 17 and 18. He recommended that the sentence "A plea bargain agreement is not by itself good cause for a dismissal." be stricken from the bill.

Marc Racicot, representing the attorney general's office, testified as a proponent. He stated that the "Cavanaugh" case is not being uniformly applied.

Karl Englund, representing the Montana Trial Lawyer's Association, testified as an opponent and feels that we need to understand exactly what a plea bargain is. He pointed out why plea bargaining is so necessary. If we didn't have this

particular process, thousands and thousands of more judges and courtrooms would be needed. The major reason for the process is to determine what needs to be done with the person charged with a particular offense for his own benefit and for the benefit of society. The plea bargaining process is simply the working out of a plan for how the person is going to be dealt with.

Mr. Englund further addressed the Cavanaugh case. The supreme court, in addressing this issue, put Montana in line with the federal rules of civil procedure with the recommendations of the American Law Institute and with the recommendations of the American Bar Association. In summary, Mr. Englund stated that he doesn't feel that passage of this bill would necessarily relieve the court's workload. He feels this bill is addressing something that is not necessarily a problem.

There being no further proponents or opponents, Rep. Mercer closed. Rep. Mercer pointed out that judges are primarily in support of this bill. He further stated that he would not be opposed to deleting the sentence on page 2, lines 17 and 18 as requested by Mr. McGrath.

In response to a question, Mr. Englund said in most of these cases, we are not dealing with the issue of guilt or innocence. The defendant's right to withdraw his plea and go to trial is not necessarily a great right. This bill discourages plea bargaining agreements, and we need them for the order of the administration for our court systems and the criminal justice system.

Rep. Addy asked Mr. McGrath if this bill will increase the number of plea bargains. Mr. McGrath doesn't feel it will have any impact in that particular area. He did, however, state that this bill will make it more likely for a defendant to know what his sentence is going to be.

There being no further questions, hearing closed on H.B. 700.

CONSIDERATION OF HOUSE BILL NO. 706: Rep. John A. Mercer, House District #50, chief sponsor of H.B. 706, testified. He said this bill is an act to clarify the arson law. The bill expands the terms "another person" and clarifies it to include a firefighter responding to or at the scene of a fire or explosion. On page 2, lines 4 and 5 it expands the definition of "beyond structures".

Bruce Suenram, representing the Career Fire Chiefs from Missoula Rural Fire Districts, testified as a proponent to H.B. 706. He said that this bill clarifies the attorney general's opinion #10, Volume 3G of the law. Firefighters are routinely placed in danger of death or bodily injury

ACTION ON HOUSE BILL NO. 700: Rep. Hammond moved that H.B. 700 DO PASS. The motion was seconded by Rep. O'Hara.

Rep. Hammond further moved to amend on page 2, line 17 following "minutes." strike "A" through "dismissal." on line 18. The motion was seconded by Rep. O'Hara and carried unanimously.

Rep. Keyser moved that H.B. 700 DO PASS AS AMENDED. The motion was seconded by Rep. Hammond.

Rep. Addy feels this bill will present a constitutional problem. Rep. Mercer argued stating that the constitutional problem would be a due process question. He feels the bill eliminates the due process problem.

Rep. Krueger spoke in favor of the bill. He said it allows the court as an unbiased party to determine as he sees fit as to what type of sentencing a defendant should be given.

In response to a question asked by Rep. Addy, Rep. Krueger stated that he feels there will be no change in the number of people who plea. He doesn't see where it will change the plea bargaining system at all -- he feels it rather clarifies the process.

Rep. Mercer moved to amend on page 1, line 20 following "agreement" by inserting "is an agreement". Furthermore, on page 1, line 21, following "prosecutor" strike "is an agreement". The motion was seconded by Rep. Brown, and the motion carried unanimously.

Rep. Hammond moved that H.B. 700 DO PASS AS AMENDED. The motion was seconded by Rep. Keyser. The question was called, and the motion carried with Rep. Brown and Rapp-Svrcek dissenting.

ACTION ON HOUSE BILL NO. 714: Rep. O'Hara moved that H.B. 714 DO PASS. The motion was seconded by Rep. Keyser. At the request of Rep. Addy, action on H.B. 714 will be further delayed.

ACTION ON HOUSE BILL NO. 712: Rep. Grady moved that H.B. 712 DO PASS. The motion was seconded by Rep. Brown.

Rep. Addy moved to strike section 7 of the bill in its entirety. The motion was seconded by Rep. Brown. The question was called, and the motion to strike carried unanimously.

Rep. Addy further moved to amend on page 2, line 6 following "applied" by striking "or" through "later" on line 7. He

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/18/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

VISITORS' REGISTER

Judiciary COMMITTEE

BILL NO. 329, 700, 706, 712, 712, 714, 831 DATE Feb 18, 1985

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Jerry Sullivan	Agri Busic. Great Falls	712	
Gary Fosdrood	Great Falls Horse Stable	712	
Jim Johnson	Belgrade Mt. Agri. Client	712	
Pat Gassaway	Great Falls Mt Ag. Business Assoc	712	
Tommy Wood	Joplin Cargill Rep	712	
Dan Price	Townsend Broadwater Grain	712	
John Lacey	Helena Agri Busic	712	
Joe Widhalm	Power Power farmers Elevator	712	
Fred Robinson	Helena	[redacted]	HB329
Doug Johnson	Fort Benton Cargill Rep	712	
Ken Nell	Gt. Falls Mt. Agri Business Assoc.	712	
Roger McGlenn	Indpt Ins. Agents of Mt.		712
Allen Broyles	Billings Mt JR Simplot	712	
Mike McGrath	Helena	700	
Mike Walker	Great Falls	706	
Doug Johnson	Kremlin, Mt Agri. Rep. Wheat	712	
Leroy Schramm	Mt Agri Business Ass	712	
Leroy Schramm	Mt Grain Elevators		
Rejean Ouellette	Glendive - Mountaineer	712	
John [illegible]	Harlowton, Mt Farmers Assoc.	712	
Jim Toth (Jim Toth)	CLINTON MT Montana Mt Ag Business Assn	712	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

February 19 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 700

FIRST reading copy (WHITE color)

REGULATE PLEA BARGAINS; REQUIRE GOOD CAUSE BE SHOWN FOR DISMISSAL

Respectfully report as follows: That HOUSE Bill No. 700

be amended as follows:

1. Page 1, line 20.
Following: "agreement"
Insert: "is an agreement"

2. Page 1, line 21.
Following: "prosecutor"
Strike: "is an agreement"

3. Page 2, line 17.
Following: "minutes."
Strike: "A" through "dismissal." on line 18.

AND AS AMENDED,
DO PASS

REP. TOM HANNAH Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

CHAIRMAN--MAZUREK, JOE
SECRETARY-STALEY, CINDY
NORMAL SCHEDULE==> SITE: OLD SUPREME COURT ROOM DAYS: M-TU-W-TH-F TIME: 10:00 A.M.-12 NOON

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
HB0681	2/15	3/15		CONCUR AS AMENDED		3/19
BROWN, JAN			ALLOW RELEASE OF CONFIDENTIAL HEALTH INFORMATION TO MEDIA & LAW ENFORCEMENT			
HB0700	2/22	3/15	3/20 3/26	CONCUR AS AMENDED		3/28
MERCER, JOHN A.			REGULATE PLEA BARGAINS; REQUIRE GOOD CAUSE BE SHOWN FOR DISMISSAL			
HB0706	2/22	3/15		CONCUR AS AMENDED		3/15
MERCER, JOHN A.			CLARIFY THE ARSON LAW			
HB0712	3/04	3/18		TABLED		3/20
MILLER, RON			CREATING LIEN FOR FERTILIZER AND CHEMICAL APPLICATORS			
HB0713	2/22	3/19		CONCUR		3/19
WALLIN, NORM			INCLUDE VOLUNTEER FIREFIGHTERS IN GOOD SAMARITAN LAW LIMITING LIABILITY			
HB0714	3/05	3/19		CONCUR		3/23
SPAETH, GARY			CLARIFY DEFINITION OF "CLAIM" UNDER MONTANA'S TORT CLAIMS LAW			
HB0717	3/04	3/11		CONCUR AS AMENDED		3/26
WALDRON, STEVE			AWARD JOINT CUSTODY, ONLY WHEN BOTH PARENTS REQUEST			
HB0722	3/04	3/21		ADVERSE REPORT		3/23
NISBET, GERALD D. (JERRY)			IMMUNITY OF TELEVISION BROADCASTER OR CABLECASTER FROM LIBEL			
HB0726	3/04	3/11		ADVERSE REPORT		3/13
GOULD, R. BUDD			PROBATIONARY LICENSE; 1ST REFUSAL TO TAKE BREATH TEST; PENALTY FOR VIOLATION			
HB0760	3/05	3/26	3/22--Tabled	CONCUR		3/26
NATHE, DENNIS G.			DISSOLUTION DECREE MAY NOT BE ENTERED UNTIL 90 DAYS AFTER FILING AND SERVICE			
HB0778	3/06	3/18 3/22		CONCUR AS AMENDED		3/28
SPAETH, GARY			REVISE ATTORNEY FEE PROVISIONS OF WORKERS' COMPENSATION ACT			

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 15, 1985

The fiftieth meeting of the Senate Judiciary Committee was called to order at 10:05 a.m. on March 15, 1985, by Chairman Joe Mazurek in Room 410 of the Capitol Building.

ROLL CALL: All committee members were present, with the exception of Senator Crippen who was excused.

CONSIDERATION OF HB 155: Representative Hal Harper, sponsor of the bill, stated HB 155 deals with a problem that has been growing in recent years--the so-called sport of dog fighting. Dog fighting was made totally illegal in all of the countries in Europe more than 100 years ago. Dog fighting is illegal under the Federal Animal Act. This sport is a sadistic, bloody fight, usually to the death. In 40% of the cases, both dogs die or are mortally wounded. A dog that wins six fights is a grand champion. The dogs are usually 38-40 pound pit bull terriors. These fights are usually staged in a clandestine way. The fight itself is totally silent except for the noise of the dogs and the people. Guns and narcotics are almost always present. The main penalties they can get these people under are for narcotic and gun violations. In many cases, live animals are used for training. Since many states are passing felony laws, these people are moving into states that have misdemeanor penalty statutes. The reason the pressure is on in Montana is they seem to be moving into this area. Representative Harper feels this bill is preventive medicine. He also has amendments which will address the concerns of the falconers.

PROPONENTS: Barbara Dahlgren, President, Federated Humane Societies of Montana, presented written testimony in support of the bill (Exhibit 1). Judy Fenton, Secretary/Treasurer, Federated Humane Societies of Montana, presented written testimony in support of the bill (Exhibit 2).

OPPONENTS: Hal Williams, Vice President, Montana Falconers Association, stated they are not opposed to the bill but are concerned about the writing of it which outlaws the sport of falconry in Montana. He testified falconry is a legal sport in Montana, but page 3 of the bill, subparagraph (c), which states the use of animals in hunting and training as permitted by law, would no longer allow this. (Representative Harper stated this concern is what his amendment would address.)

CLOSING STATEMENT: Representative Harper stated this is just an enforcement bill, and he would like to see it passed without the amendment.

Hearing on HB 187 was closed.

CONSIDERATION OF HB 700: Representative John Mercer, sponsor of the bill, stated this bill deals with plea bargaining. It is the first time the mention of plea bargaining appears in the statutes. It grows out of the case, State v. Cavanaugh. This bill seeks to reverse that opinion and provide safeguards. It tells what a plea bargain is. It says the judge cannot participate in the plea bargain. It says the judge is not required to impose the sentence required by the plea bargain. The due process comes in on page 2, lines 4-6. The reason the Cavanaugh case is bad is it requires a judge to go through all of the sentencing decisions and decide what is appropriate; it lowers the bench down to the level of being a part of the county attorney's office; and the public is not too fond of plea bargains and wants the judge to be an independent person. Section 2 says before a charge is reduced, the prosecuting attorney is required to tell the judge what the reason is and that reason must go in the minutes. This bill will give the public the reason why sentences are reduced.

PROPONENTS: Judge Jack L. Green, Fourth Judicial District, Missoula, testified he is for this bill because he thinks the supreme court has put the judges in a ridiculous and untenable position. They must be sure there is no promise of leniency, but they are stuck with a plea bargain with which they had nothing to do. The people elect judges. The public defender is not elected. This allows the county attorney to decide what the sentence is, the judge is then stuck with it, and the judge takes the heat for it. At the time a plea bargain is arranged, they generally do not have the presentence investigation and report. However, the judge has this information at the time he imposes sentence. As a district judge, he resents being forced to negotiate with a criminal as to what we are going to do with him. The legislature makes the law, and the judges enforce it. If the defendant feels he received a sentence that is out of line, it can be reviewed by the sentence review board. Mark Murphy, Assistant Attorney General assigned to the County Prosecutors Services Board, testified they have looked at this bill and approve it. They believe the negotiation process for a plea is a process between the prosecutor and the defendant. The defendant knows that what he is bargaining for is a recommendation in exchange for dismissal of other charges. That is what the prosecutor can deliver. He thinks one of the most important parts of this bill is it allows judicial independence. It also encourages good-faith bargaining at this point. The judge has to be accountable for the decision. Joe Roberts, from the Attorney General's office, stated they think the section on

page 2 is very important as far as the defendant is concerned. The defendant has to clearly understand it is a recommendation that is being bargained for. The defendant's rights are being protected by this legislation by putting into practice what has been developed. He feels the sentencing hearing is a very important part of the process. The judge learns a lot at that hearing, as there is an opportunity for a victim to come to a sentencing hearing and give testimony.

OPPONENTS: William Boggs, Missoula County Public Defenders Association, spoke on behalf of his association and on behalf of all of the civil litigants of Montana and the taxpayers of the state. He testified the taxpayers will be paying for this bill if it passes, as there will be a drastic increase in criminal jury trials. About 75% of the cases are currently settled by plea bargaining, so the court will have to sit and hear criminal cases. Public defenders get supplementary money when they go to trial. Many resources are tied up in a criminal trial: police officers, two prosecutors, two public defenders, and usually a private investigator. Mr. Boggs thinks the fiscal impact on the Montana taxpayers should be kept in mind. The sponsor is obviously not too fond of plea bargains. The public is less fond of paying three or four times the amount it puts out now for criminal prosecution and defense. The current rule on plea bargains is not intended to lower the bench. Do you think it lowers the bench when two contractors resolve their dispute out of court? Settlements work because both sides give up something. This bill overturns the rule on plea bargains which 48 states have in effect. It takes us back a few decades in administration of law. He foresees judge shopping. In talking about the fairness this bill provides for a defendant, there is nothing to lose by going to trial, because if you plead guilty, you are sure you will get convicted. He would not advise any client to plead guilty if this bill is passed.

QUESTIONS FROM THE COMMITTEE: Senator Towe asked Judge Green to respond to Mr. Boggs' testimony. Judge Green addressed the contention there will be a lot more trials. There has not been a big decrease in the number of trials since the Cavanaugh decision. Senator Towe stated many judges already indicate whether or not they will accept plea bargains. Judge Green then addressed Mr. Boggs' contention about the expense. He stated the public defense system itself has created a great increase of public assistance. Any criminals cost the people money. This will not make that much difference in the cost of these prosecutions. Senator Towe asked if the judge would not indicate in advance whether he would accept the plea bargain, would he counsel his client to accept it? Senator Towe stated ultimately the guilt or innocence of an individual is irrelevant; what is relevant is whether the evidence will prove it. Judge Green pointed out you don't sign a contract until you see the terms.

ADDITIONAL TESTIMONY FROM OPPONENTS: Chairman Mazurek then allowed Karl Englund, representing the Montana Trial Lawyers Association, to testify as he was late arriving at the hearing due to his testifying on another bill being heard at the same time. Mr. Englund stated our court adopted the rules that are contained in the federal rule E(4) that were proposed by the Federal Law Institute and the American Bar Association. At the very least, this bill is premature at best. We ought to give it a chance to work and see how it works.

CONTINUATION OF QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault stated as far as this agreement is concerned, he asked if Judge Green, sitting on the bench, have any opposition if the bargain offered several alternatives. He asked if he would find that to be proper under this bill if it were to pass in this form. Judge Green responded yes. Senator Towe asked if there were any possible compromise in suggesting we ought to make the presentencing procedure available before the judge has to make a decision on it and then allow for an alternative plea. Then the judge, after seeing all of the facts, can make up his mind. Representative Mercer stated that would be doing a presentencing investigation before someone pleads guilty. Judge Green replied in the presentencing investigation and report, they give their version of the crime, and you would have them saying what they did.

CLOSING STATEMENT: Representative Mercer stated the fiscal argument is completely invalid. This changes our system back to what we had for years. They have had this rule and have not seen any impact. People that go to trial seem to need more of a penalty than someone who pleads guilty and seems to be remorseful.

Hearing on HB 700 was closed.

CONSIDERATION OF HB 706: Representative John Mercer, sponsor of HB 706, testified this bill does two things: includes firefighters in the definition of other persons and expands the definition of occupied structures to other property. As far as arson, if a firefighter is responding to an arson case and is put in danger, he should be covered. Representative Mercer feels this just clarifies what is already there. A motor home or a motorboat might be an occupied structure.

PROPONENTS: Bruce Houston, Deputy State Fire Marshal, testified the state fire marshals are in favor of this bill as it adds verbiage which is needed for better definition. Creighton Sayles, Missoula Rural Fire Department and Special Deputy, State Fire Marshals Service, testified the law enforcement people already have similar language at the present time. Hopefully this bill will give encouragement to county attorneys and prosecutors.

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 03/15/85

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen			X
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels			
Chairman Senator Joe Mazurek	X		

DATE _____

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Dana Tollefsen	Fed. Humane Soc. MT.	155	✓	
Judith Fenton	Federated Humane Societies	155	✓	
Rude Houston	St. Fire Marshal	706	✓	
Patrick Sheehy	Montana Society of Hospital Community Relations	681	✓	
Frank Crowley	Dept Health	187	✓	
Gerald Williams	Montana Fallowers Ass.	155		
Nelson Rivers	MONT. Hospital Assn	681	✓	
Linda Vinson	Montana Hospital Assn	681	✓	
Norman Grell	National Health Care Institute	181	✓	
Dave Brown	Sponsor - House District #72	395	✓	
Mark S. Murphy	MCAA	700	✓	
William Boggs	Missla County Pub. Defender	700		✓
Karl L. Loos	District Judge	700	✓	
Richard Gebhardt	Missoula Rural Fire Dept	706	✓	
Leighton Sayles	Missoula Rural Fire Dept	706	✓	
Steve Pilcher	DHES	187	✓	
Wm. J. Hall	Qwest	187	✓	
Richard W. Hunt	MT Funeral Directors Assoc.	681	✓	✓
Cathy Campbell	MT Assn of Churches	HB 200	✓	

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 20, 1985

The fifty-third meeting of the Senate Judiciary Committee was called to order on March 20, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF HB 803: Representative Ray Peck, sponsor of HB 803, stated the title of the bill tells the story. He has a little concern he wanted to address to the committee concerning page 1, lines 16-18. The intent is it would be $25 per day. That is the fee for courts of record.

PROPONENTS: Pat Paul, Justice of the Peace in Cascade County, testified what this bill tries to do is make it equal to the district court. Whether it is a court of record or not, they are performing the same function for society. It is only fair they at least be paid equal to the district court. It should not be an undue burden to serve. Their jury trials last only one day. There are not that many trials in Montana. Jim Jensen, representing the Montana Magistrates Association, testified the fiscal impact on Missoula County for the first half of 1985, with the two courts combined, was $1,931.71 in witness fees. Doubling that, the maximum would be about $37,000 annually that it would cost the county. He thought most judges will continue to assess most of these fees back to those that can afford them.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Shaw asked if this would still be a tax increase to the taxpayers of the counties. Mr. Jensen replied yes. Judge Paul responded that at least in Cascade County, the answer to that question would be no, because when it comes budget time, they pad the budget for the number of jury trials they anticipate they will have for the year. They have that surplus in the budget because they seldom have those jury trials and that money is still there. They have always turned money back in because they have not met the anticipation of having those trials. Senator Daniels asked why they penalize the juror who gets excused. Judge Paul replied in most cases the juror is excused on his own motion, not because he could have called the day before and have been excused based on that. Very few jurors have shown

FURTHER CONSIDERATION OF HB 310: Proposed amendments were distributed to the committee (Exhibit 2). Senator Mazurek explained these amendments would reinsert the ability to get a temporary restraining order (TRO) from a justice of the peace. Mr. Petesch explained the first two are Senator Crippen's suggestions. The third reinserts justice and municipal courts and provides you could deny the petition because the person has fled the home. The fourth is language we came up with for review by the district court. Senator Towe asked if we needed to then add that it is subject to hearing or the judge may set it for hearing if he so chooses. Senator Pinsoneault suggested it not be complicated. This is simple. It can be done in chambers. Mr. Petesch pointed out you can remove it immediately to district court. If a dissolution or separation proceeding is filed while the order is in effect, or if a petition which has been filed is voluntarily dismissed, jurisdiction is removed. Senator Towe suggested that a section 8 be added stating any case brought by Section 40-4-103, MCA, may be removed to district court. He stated he would talk further with Mr. Petesch about this.

FURTHER CONSIDERATION OF HB 585: Senator Daniels stated you might as well abolish it. You are increasing the time the criminal will be in court. Chairman Mazurek stated since it appears the bill may need some technical changes, it will be further considered at a later date.

ACTION ON HB 803: Senator Pinsoneault asked if city courts were included in this bill. Mr. Petesch responded courts not of record. Senator Pinsoneault stated you are increasing the cost, and they don't have much money. Senator Mazurek stated he suspects in those courts, most of those are criminal cases. Senator Pinsoneault commented it is the people's court and he has a great amount of faith in the way it functions. Senator Daniels moved HB 803 be recommended BE NOT CONCURRED IN. It is a burden upon cities with limited budgets. In small towns, people consider it an honor to be able to serve on the jury. Senator Towe pointed out we had a bill we did pass that will increase the fees these same courts will get from filing and the fees they already receive more than offset the costs. The motion failed with Senators Daniels, Mazurek, and Pinsoneault voting in favor. Senator Towe moved HB 803 be recommended BE CONCURRED IN. The motion carried with Senator Pinsoneault voting in opposition.

ACTION ON HB 481: Senator Galt moved HB 481 be tabled. Senator Daniels moved as a substitute motion HB 481 be recommended BE NOT CONCURRED IN. The motion carried with Senators Brown and Mazurek voting in opposition.

FURTHER CONSIDERATION OF HB 700: Senator Pinsoneault stated he supported the bill because it puts the law like it was before the supreme court case. Senator Towe stated he had some problems with it. He had

no problem if you want to strike the language on page 1, "if a judge does not impose . . . ." That's the bill. Senator Pinsoneault moved HB 700 be recommended BE CONCURRED IN. What it does now is you allow the defendant to go in and he works out an agreement with the judge and the judge looks at it and asks for a presentence report and will not concur. After all of that, then the defendant says if you will not accept my bargain, I will withdraw my plea. If you didn't buy my plea, then I am going to start all over again. To suggest what do you have to lose, that is not true. How about a child molester case? There is no way that type of a case would be tried before a jury. He thinks you should have one chance, and if the judge approves, that's great. Otherwise, it's just prolonging the process. Mr. Petesch pointed out a potential constitutional problem had been raised. Senator Pinsoneault withdrew his motion in order that the bill might be further studied.

TABLING OF HB 712: Senator Towe moved HB 712 be TABLED. The reason is he really thinks there are some priority problems and some reasons we cannot include and protect everybody in the world. This is a really good reason for a study. Senator Pinsoneault agreed with Senator Towe's comments. Mr. Petesch pointed out there were two proposed sets of amendments. The motion carried with Senator Galt voting in opposition.

FURTHER CONSIDERATION OF HB 340: Proposed amendments were distributed to the commitee (Exhibit 3). Senator Towe moved adoption of the amendments, which motion carried unanimously. Senator Pinsoneault suggested an amendment to add before he turns the property over, he is entitled to these payments. The landlord wouldn't have any leverage without this, as many are handled by the landlord and tenant themselves. Mr. Petesch pointed out you have a conclusive presumption of abandonment. Senator Towe asked if you do transfer with that right. Mr. Petesch stated the writ is if the tenant removes the property. Senator Towe agreed with his point. Mr. Petesch stated he would look at this.

There being no further business to come before the committee, the meeting was adjourned at 12:08 p.m.

Committee Chairman

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 032085

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 26, 1985

The fifty-ninth meeting of the Senate Judiciary Committee was called to order at 10:08 a.m. on March 26, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present, with the exception of Senator Kermit Daniels who was excused.

CONSIDERATION OF HB 760: Representative Dennis Nathe, sponsor of HB 760, testified this bill changes the bifarcation process present in our current state divorce laws. By that he meant any spouse can file for a divorce, and if the other spouse does not contest that filing, the divorce can become final within 21 days. It comes final, but problems such as division of property and child custody are all left hanging. What HB 760 does is on page 2, lines 13-14. This is the only judicial decree that comes off the bench that does not handle the problem in its entirety. If one party happens to get remarried, then you have three or four people involved in this battle. It places a great burden on the court system. The Child Support Bureau of the Department of Revenue had 600+ cases during the last quarter to get warrants of distraint and notices of levy for. Of that 40% involve paternity suits, and 35% involve this problem where the custody and child support was not settled. What this bill attempts to do is clean up a legal process that is on the books and say before a final decree of dissolution is granted, all of these issues will be settled in a final decree. In divorce, those two parties will have to sit down and take a look at what they are doing and what the impact will be on the children and on themselves.

PROPONENTS: Mike Abley, Administrator of the Montana Supreme Court, testified the court had directed him to urge the committee's support for this bill. The supreme court gets involved in cases that would not come before it if this bill were granted. Things don't remain static when you get divorced. The longer you put off the final paperwork in these cases, the more complex it gets. Ultimately these cases go before the supreme court. The children suffer. The property is tied up for years.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: None.

happening. He didn't think any law on either side of the issue is going to do it. Senator Towe stated he agreed with collectors and the use of weapons for legitimate display and the transporting through airports, but he questioned how we address the question that may legitimately be raised about public safety. Mr. Elwell questioned whether you could define a weapon. A weapon could be two hatchets or a stick of dynamite, neither of which would be picked up by a metal detector. If he read the bill right, it did say the city could forbid the discharge of a firearm within the city limits. Senator Towe suggested we might allow cities to prevent the carrying of weapons within certain public buildings if they weren't with displays, etc.

CLOSING STATEMENT: Representative Thoft thought he would have a great deal of trouble trying to decide which public buildings are important and which were not. It is a sad situation where someone gets hardmed with a firearm, but he doesn't think the bill will change any of that.

Hearing on HB 643 was closed.

FURTHER CONSIDERATION OF HB 700: Senator Pinsoneault stated the more he has looked into this, if they established a committee to review criminal procedure rules and he thinks Judge Olson would like to try to address this through is committee and through the rules he hopes they would get drafted. His inclination would be to table the bill. Senator Mazurek suggested talking to Representative Mercer about this.

ACTION ON HB 717: Senator Mazurek stated the House has passed Senator Brown's bill in essentially the same form as it was passed through the Senate. Senator Brown's bill, as opposed to page 5, line 5, of this bill, changes the court may with the consent of both parties. That has been changed in Senator Brown's bill so we would not need to make that change here. Senator Mazurek had asked Mr. Petesch to go through Senator Brown's bill and compare it with this bill. This was to make sure the two were consistent. It seemed we did not have reference to child support and a plan for custody. Senator Towe asked why section 2 was stricken. Senator Mazurek replied because that is a completely opposite approach to Senator Brown's bill. Senator Towe pointed out the idea of a plan is in Senator Brown's bill. Senator Mazurek responded no. Senator Shaw moved HB 717 be tabled as it is all new stuff. He felt we should see what happen's in the next two years. Senator Mazurek stated this bill addresses a couple of other things that are probably important. It requires the court to tkae into account child support in child custody situations. Senator Towe asked what Senator Brown thought of this bill. He replied if we amend it like Mr. Petesch has suggested, it seems we can improve some things. Senator Mazurek commented he felt page 2, lines 10-13, page 3, lines 20-23, and page 4, lines 7-12,

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 032685

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels			X
Chairman Senator Joe Mazurek	X		

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 28, 1985

The sixty-second meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 28, 1985, by Chairman Joe Mazurek, in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

ACTION ON HB 837: Senator Daniels moved HB 837 be amended as follows:

Page 1, line 22.
Following: "duty"
Strike: "or power of his office"
Insert: "in a reasonable and proper manner"

Senator Blaylock pointed out this bill arose out of a police dog's being killed in one community. He asked if the man who hurt the dog were caught and punished. Senator Mazurek replied yes. He also pointed out the only statute available to prosecute the man under was for a misdemeanor. The motion to amend carried unanimously. Senator Brown moved the word "seriously" be added before the word "disables" on page 1, line 19. Senator Yellowtail asked if the word "disabled" indicated the dog would be rendered useless. Senator Mazurek explained he may have a disability, but it may only be one percent of his body. He stated if you just disable the animal, you still have a criminal penalty. Senator Towe moved as a substitute motion the bill be amended as follows:

Page 1, line 19.
Following: "knowingly"
Strike: "disables,"
Following: "shoots"
Strike: ","

The motion carried unanimously. Senator Pinsoneault stated he would like to leave this a felony matter, but moved the bill be amended as follows:

Page 2, line 1.
Following: "5"
Strike: "3 years"
Insert: "1 year"

ACTION ON HB 700: Senator Pinsoneault submitted proposed amendments to HB 700. He stated we are not talking about a constitutional thing. Plea bargaining just grew and grew. The amendments take the judge out of the plea bargaining process. It is between the prosecutor and the defendant and his counsel. The defendant makes one plea only. The defense counsel advises that after the plea has been entered, the judge will ask about a plea bargaining agreement, and he may or may not go along with it. In order to apply some due process, we have provided some agreements. He does not believe the judges will like this. Section 46-12-202, MCA, is the arraignment stage of the proceeding. If he enters into a plea bargaining agreement, he alerts him to the fact if you are thinking about a plea bargaining agreement, you should take a look at what will happen. Whatever you do in entering your plea, it may have an impact on what automatically happens to your sentence. He advises him again concerning what he already told him at the arraignment. You are not allowing him to withdraw his guilty plea. Either you are guilty or you are not. Senator Pinsoneault doesn't think our system was ever designed to function like this. He believes you should get the judge out of this bargaining process. Senator Shaw moved adoption of the amendments. Senator Towe asked what was contained in Title 46, chapter 18. Senator Pinsoneault responded all of the sentencing statutes. Mr. Petesch stated that contained the sentencing alternatives. Senator Pinsoneault went on to explain it contained the sentencing alternatives and what the judge can impose. Senator Towe asked if it were the specific sentences for specific crimes. Senator Pinsoneault answered it is the various sentencing alternatives. Senator Yellowtail asked what Rule 11 was. Mr. Petesch explained that is one of the federal rules of criminal procedure that have been adopted which requires where a plea bargain is not accepted by a judge, the defendant must be allowed to withdraw his plea. Currently, the Montana Supreme Court has adopted the federal rule and the American Bar Association standards that say if the judge does not accept the plea bargain, the defendant must be allowed to withdraw his guilty plea. Senator Towe stated he doesn't have any problem with participating in the making of an agreement, but would like to see some system devised where we might be able to provide somewhere the judge can indicate whether he is inclined to accept it after it is worked out and solve this problem. Senator Pinsoneault stated as defense counsel, you have precious little sometimes to work with, and the plea bargain gives you leverage. Sometimes that is all you've got. You are saying I am guilty, but I am not if you don't accept my plea. Senator Mazurek pointed out all this says is it is not mandatory. Senator Crippen stated he has had some concerns about this procedure in the past with regard to the rights of the defendant, but he feels Senator Pinsoneault has convinced him what we are trying to do is we are being fair to the defendant. They know it up front. They enter into this thing. The people who really get hurt are the people outside--the

citizens. He thinks we need to get tougher on this. He doesn't believe we will have frivolous plea bargaining agreements. Senator Blaylock stated Senator Towe has been fighting to get more judges to handle the case load, but if we put this in, then the fellow who had agreed to this shouldn't be tried at all because he is mentally incompetent. If we are going to jam these cases into our court system, we will have to be prepared to fund more judges. Senator Daniels added, and more prisons. Senator Pinsoneault stated he has never taken a plea bargain agreement in front of Judge Green that he didn't accept. As a defense counsel, you present your case to the judge in light of all circumstances--you should not be able to dicker with the judge. You run the risk. There are many cases you won't ever take in front of a jury. Senator Towe stated admittedly he hasn't been in the criminal process for a number of years, but he pointed out he remembered one federal case he had fairly recently, and the rule in federal court is you don't bargain with the judge period. The district attorney went to the judge when he wasn't present and told the judge about the situation. The judge said he would go along with the plea bargain unless there were something in the presentencing investigation. He does not think that is undignified on the part of the judge. Senator Towe then presented some proposed amendments to the committee (Exhibit 4). Senator Pinsoneault stated from the arguments, the committee is talking about two different policies, and he thinks there is an in between. Senator Yellowtail submitted the judicial system has spoken. We have rules which permit plea bargaining. Secondly, if we are going to kill plea bargaining, he believes we should write a bill that says in the title we are going to kill plea bargaining and then we should do it. Senator Towe stated he thinks he would agree if you have to pass the bill, it is better with Senator Pinsoneault's amendments, but he thinks there is a middle ground. Senator Towe moved as a substitute motion that the amendments presented on Exhibit 4 be adopted. Senator Mazurek stated you have a presentence investigation which will give the judge lots of evidence that would never be admissible at trial. If you do this and the judge says based on this record, I won't accept it, then the judge is placed in a position where he must disqualify himself. Senator Towe stated he will likely know about that anyway. The question will be raised whether the prior conviction can be used for evidentiary purposes. The one question you may raise is the probation officer will ask the individual about this particular crime. The defense counsel can simply tell the individual you are taking a risk if you explain to the probation officer about that particular crime. The motion to adopt the amendments on Exhibit 4 failed (see roll call vote attached as Exhibit 5). The committee then reverted to the motion to adopt the amendments on Exhibit 3. The motion carred unanimously (see roll call vote attached as Exhibit 6). Senator Pinsoneault moved HB 700 be recommended BE CONCURRED IN AS AMENDED. He stated if the purpose of our system is to

rehabilitate, a plea of guilty is the first step toward acknowledgment on the part of the defendant. That is very important. The motion carried (see roll call vote attached as Exhibit 7).

TABLING OF HB 329: Chairman Mazurek explained that HB 329 still remained in committee. A previous motion to table the bill failed on a tie vote. Senator Shaw moved HB 329 be tabled. The motion to table HB 329 carried (see roll call vote attached as Exhibit 8).

ACTION ON HB 520: Senator Towe moved HB 520 be recommended BE CONCURRED IN. The motion carried with Senators Mazurek and Yellowtail voting in opposition.

ACTION ON HB 643: Senator Shaw moved HB 643 be recommended BE CONCURRED IN. Senator Mazurek stated if we ever have a sales tax, you won't be able to apply it to guns. Senator Towe suggested a compromise. The issue is public buildings. The issue of the propriety of the bill is a very legitimate one. He thinks there is also a very serious problem about the public buildings, because that says the city or the county cannot protect itself. Senator Towe moved HB 643 be amended as follows:

1. Page 1, lines 24 and 25.
Following: "assembly"
Insert: ", publicly-owned building, park under its jurisdiction,"
Following: "school"
Strike: remainder of line 24 through "alarm" on line 25

2. Page 2, line 2.
Following: "minors."
Insert: "Nothing contained herein shall allow any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others nor shall anything contained herein prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise."

Senator Shaw stated as he understands it, there has been an effort other places to ban all firearms. This bill is saying towns cannot ban firearms period. That is what he wants. He doesn't want the city fathers deciding they have to ban firearms to cut down on criminal activity. Senator Blaylock questioned whether they realized what they were doing. We are talking about local control, but we are saying cities and towns don't have the right to regulate themselves. The motion to adopt Senator Towe's amendments carried with Senator Crippen voting in opposition. Senator Shaw moved HB 643 be recommended BE CONCURRED IN AS AMENDED. He agreed with Senator Blaylock but knows there is a movement

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 032885

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

SENATOR PINSONEAULT'S PROPOSED AMENDMENTS TO HB 700:

1. Title, line 6.
Following: "SECTIONS"
Insert: "46-12-202,"
Following: "46-12-204"
Insert: ","

2. Page 1, following enacting clause.
Insert: "Section 1. Section 46-12-202, MCA, is amended to read:

"46-12-202. Court to advise defendant of his rights and the charges. (1) The defendant shall be advised by the court as follows:

(a) of the nature of the crime charged against him;

(b) of the punishment as set forth by statute for the crime charged;

(c) if the defendant intends to enter into a plea bargain agreement:

(i) that under 46-12-204, the court is not bound by such agreements;

(ii) that under 46-12-204, if the court does not impose the sentence recommended by the prosecution pursuant to a plea agreement, the court is not required to allow the defendant to withdraw a plea of guilty;

(iii) that criminal sentencing is governed by Title 46, chapter 18;

(iv) that the defendant and his counsel should carefully review Title 46, chapter 18, and consider the most severe sentence that can be imposed for a particular crime;

~~(c)~~ (d) if the defendant appears for arraignment without counsel, of his right to counsel and of his right to assigned counsel if he is unable to employ counsel. If counsel is or has been waived by the defendant, the court shall ascertain if the waiver is or was voluntary before proceeding.

~~(d)~~ (e) of the time prescribed by statute to enter a plea;

~~(e)~~ (f) of his right to secure bail to release him from custody.

(2) The court, or the clerk or county attorney under its direction, must:

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 032885
BILL NO. HB 700

(a) deliver to the defendant a true copy of the indictment, information, or complaint, including the endorsements thereon and the list of witnesses when required;

(b) read the indictment, information, or complaint to the defendant unless the defendant or his counsel waives such reading; and

(c) ask him whether he pleads guilty or not guilty to the indictment."

Renumber: subsequent sections

3. Page 2, line 5.
Following: "defendant"
Insert: ": (i)"

4. Page 2, line 6.
Following: "(3) (a)"
Insert: "; (ii) of the punishment as set forth by statute for the crime charged;

(iii) that prior to entering a plea of guilty, the defendant and his counsel should have carefully reviewed Title 46, chapter 18, and considered the most severe sentence that can be imposed for a particular crime;"

5. Page 2, line 6.
Following: "and"
Insert: "(iv)"
Following: "that"
Strike: "he"
Insert: "the judge"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 032885

PROPOSED AMENDMENTS TO HB 700:

1. Page 1, line 20.
Following: "(3)"
Strike: "(a)"

2. Page 1, line 25.
Following: "agreement."
Strike: remainder of line 25 through "guilty." on page 2, line 3
Insert: (4) If a defendant and a prosecutor have entered into a proposed plea bargain agreement, they may ask the judge if he will accept a plea bargain in the case. The judge may condition his acceptance of a plea bargain upon review of a report from a probation officer containing the information in 46-18-112. The judge, after review of the report, shall inform the defendant and the prosecutor of his decision concerning acceptance of a plea bargain."

3. Page 2, line 4.
Following: line 3
Strike: "(b)"
Insert: "(5)"

4. Page 2, line 6.
Following: "(3)"
Strike: "(a)"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 032885
BILL NO. HB 700

SENATE COMMITTEE JUDICIARY

Date 032885 House Bill No. ~~SB~~ 700 Time 10:43 am

NAME	YES	NO
Senator Chet Blaylock	X	
Senator Bob Brown		X
Senator Bruce D. Crippen		X
Senator Jack Galt		X
Senator R. J. "Dick" Pinsoneault		X
Senator James Shaw		X
Senator Thomas E. Towe	X	
Senator William P. Yellowtail, Jr.	X	
Vice Chairman Senator M. K. "Kermit" Daniels	X	
Chairman Senator Joe Mazurek		X
	(4)	(6)

Secretary Chairman

Motion: Towe's amendments

(include enough information on motion—put with yellow copy of committee report.)

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 032885
BILL NO. HB 911

SENATE COMMITTEE JUDICIARY

Date 032885 House Bill No. 700 Time 10:57

NAME	YES	NO
Senator Chet Blaylock	X	
Senator Bob Brown	X	
Senator Bruce D. Crippen	X	
Senator Jack Galt	X	
Senator R. J. "Dick" Pinsoneault	X	
Senator James Shaw	X	
Senator Thomas E. Towe	X	
Senator William P. Yellowtail, Jr.	X	
Vice Chairman Senator M. K. "Kermit" Daniels	X	
Chairman Senator Joe Mazurek	X	
	(10)	(0)

Secretary Chairman

Motion: Pinsoneault's amendments

(include enough information on motion—put with yellow copy of committee report.)

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 032885
BILL NO. HB 700

SENATE COMMITTEE JUDICIARY

Date 032885 House Bill No. 700 Time 10:53 am

NAME	YES	NO
Senator Chet Blaylock		X
Senator Bob Brown	X	
Senator Bruce D. Crippen	X	
Senator Jack Galt	X	
Senator R. J. "Dick" Pinsoneault	X	
Senator James Shaw	X	
Senator Thomas E. Towe		X
Senator William P. Yellowtail, Jr.		X
Vice Chairman Senator M. K. "Kermit" Daniels		X
Chairman Senator Joe Mazurek	X	
	(6)	(4)

Secretary Chairman

Motion: BCIAA

(include enough information on motion—put with yellow copy of committee report.)

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 032885
BILL NO. HB 700

March 28 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 700

third reading copy (blue color)

(Senator Pinsoneault)

REGULATE PLEA BARGAINS; REQUIRE GOOD CAUSE BE SHOWN FOR DISMISSAL

Respectfully report as follows: That HOUSE BILL No. 700

be amended as follows:

1. Title, line 6.
Following: "SECTIONS"
Insert: "46-12-202,"
Following: "46-12-204"
Insert: ","

2. Page 1, line 10.
Following: line 9
Insert: "Section 1. Section 46-12-202, MCA, is amended to read:

"46-12-202. Court to advise defendant of his rights and the charges. (1) The defendant shall be advised by the court as follows:

(a) of the nature of the crime charged against him;

(b) of the punishment as set forth by statute for the crime charged;

(c) if the defendant intends to enter into a plea bargain agreement:

(i) that under 46-12-204, the court is not bound by such agreements;

~~BUT ASS~~

~~DO NOT PASS~~

CONTINUED

Chairman.

(ii) that under 46-12-204, if the court does not impose the sentence recommended by the prosecution pursuant to a plea agreement, the court is not required to allow the defendant to withdraw a plea of guilty;

(iii) that criminal sentencing is governed by Title 46, chapter 18; and

(iv) that the defendant and his counsel should carefully review Title 46, chapter 18, and consider the most severe sentence that can be imposed for a particular crime;

~~(c)~~ (d) if the defendant appears for arraignment without counsel, of his right to counsel and of his right to assigned counsel if he is unable to employ counsel. If counsel is or has been waived by the defendant, the court shall ascertain if the waiver is or was voluntary before proceeding.

~~(d)~~ (e) of the time prescribed by statute to enter a plea;

~~(e)~~ (f) of his right to secure bail to release him from custody.

(2) The court, or the clerk or county attorney under its direction, must:

(a) deliver to the defendant a true copy of the indictment, information, or complaint, including the endorsements thereon and the list of witnesses when required;

(b) read the indictment, information, or complaint to the defendant unless the defendant or his counsel waives such reading; and

(c) ask him whether he pleads guilty or not guilty to the indictment, information, or complaint."

Renumber: subsequent sections

3. Page 2, line 5.
Following: "defendant"
Insert: ": (i)"

HOUSE BILL NO. 700

4. Page 2, line 6.
Following: "(3) (a)"
Insert: "; (ii) of the punishment as set forth by statute for the crime charged;

(iii) that prior to entering a plea of guilty, the defendant and his counsel should have carefully reviewed Title 46, chapter 18, and considered the most severe sentence that can be imposed for a particular crime;"
Following: "and"
Insert: "(iv)"
Following: "that"
Strike: "he"
Insert: "the judge"

AND AS AMENDED

BE CONCURRED IN

Senator Joe Mazurek, Chairman

SENATE STANDING COMMITTEE REPORT

March 28 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 700

third reading copy (blue color)

(Senator Pinsoneault)

REGULATE PLEA BARGAINS; REQUIRE GOOD CAUSE BE SHOWN FOR DISMISSAL

Respectfully report as follows: That HOUSE BILL No. 700

be amended as follows:

1. Title, line 6.
Following: "SECTIONS"
Insert: "46-12-202,"
Following: "46-12-204"
Insert: ","

2. Page 1, line 10.
Following: line 9
Insert: "Section 1. Section 46-12-202, MCA, is amended to read:

"46-12-202. Court to advise defendant of his rights and the charges. (1) The defendant shall be advised by the court as follows:

(a) of the nature of the crime charged against him;

(b) of the punishment as set forth by statute for the crime charged;

(c) if the defendant intends to enter into a plea bargain agreement:

(i) that under 46-12-204, the court is not bound by such agreements;

~~XXXXXX~~

~~XXXXXXXXX~~

CONTINUED

Chairman.

March 28 19 85

HOUSE BILL NO. 700

(ii) that under 46-12-204, if the court does not impose the sentence recommended by the prosecution pursuant to a plea agreement, the court is not required to allow the defendant to withdraw a plea of guilty;

(iii) that criminal sentencing is governed by Title 46, chapter 18; and

(iv) that the defendant and his counsel should carefully review Title 46, chapter 18, and consider the most severe sentence that can be imposed for a particular crime;

~~(c)~~ (d) if the defendant appears for arraignment without counsel, of his right to counsel and of his right to assigned counsel if he is unable to employ counsel. If counsel is or has been waived by the defendant, the court shall ascertain if the waiver is or was voluntary before proceeding.

~~(d)~~ (e) of the time prescribed by statute to enter a plea;

~~(e)~~ (f) of his right to secure bail to release him from custody.

(2) The court, or the clerk or county attorney under its direction, must:

(a) deliver to the defendant a true copy of the indictment, information, or complaint, including the endorsements thereon and the list of witnesses when required;

(b) read the indictment, information, or complaint to the defendant unless the defendant or his counsel waives such reading; and

(c) ask him whether he pleads guilty or not guilty to the indictment, information, or complaint."
Renumber: subsequent sections

3. Page 2, line 5.
Following: "defendant"
Insert: ": (i)"

CONTINUED

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HOUSE BILL NO. 700

4. Page 2, line 6.
Following: "(3) (a)"
Insert: "; (ii) of the punishment as set forth by statute for the crime charged;

(iii) that prior to entering a plea of guilty, the defendant and his counsel should have carefully reviewed Title 46, chapter 18, and considered the most severe sentence that can be imposed for a particular crime;"
Following: "and"
Insert: "(iv)"
Following: "that"
Strike: "he"
Insert: "the judge"

AND AS AMENDED

BE CONCURRED IN

Senator Joe Mazurek, Chairman

HOUSE BILL NO. 700

INTRODUCED BY MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING PLEA BARGAIN AGREEMENTS; REQUIRING GOOD CAUSE TO BE SHOWN BEFORE A FELONY CHARGE IS DISMISSED; AMENDING SECTIONS 46-12-202, 46-12-204, AND 46-13-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. SECTION 46-12-202, MCA, IS AMENDED TO READ:

"46-12-202. Court to advise defendant of his rights and the charges. (1) The defendant shall be advised by the court as follows:

(a) of the nature of the crime charged against him;

(b) of the punishment as set forth by statute for the crime charged;

(c) if the defendant intends to enter into a plea bargain agreement:

(i) that under 46-12-204, the court is not bound by such agreements;

(ii) that under 46-12-204, if the court does not impose the sentence recommended by the prosecution pursuant to a plea agreement, the court is not required to allow the defendant to withdraw a plea of guilty;

(iii) that criminal sentencing is governed by Title 46, chapter 18; and

(iv) that the defendant and his counsel should carefully review Title 46, chapter 18, and consider the most severe sentence that can be imposed for a particular crime;

~~(c)~~(d) if the defendant appears for arraignment without counsel, of his right to counsel and of his right to assigned counsel if he is unable to employ counsel. If counsel is or has been waived by the defendant, the court shall ascertain if the waiver is or was voluntary before proceeding.

~~(d)~~(e) of the time prescribed by statute to enter a plea;

~~(e)~~(f) of his right to secure bail to release him from custody.

(2) The court, or the clerk or county attorney under its direction, must:

(a) deliver to the defendant a true copy of the indictment, information, or complaint, including the endorsements thereon and the list of witnesses when required;

(b) read the indictment, information, or complaint to the defendant unless the defendant or his counsel waives such reading; and

(c) ask him whether he pleads guilty or not guilty to the indictment, information, or complaint."

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Section 2. Section 46-12-204, MCA, is amended to read:

"46-12-204. The plea -- plea bargains. (1) The defendant shall enter a plea of guilty or not guilty to the indictment, information, or complaint. If the defendant refuses to plead to the indictment, information, or complaint, a plea of not guilty must be entered.

(2) The court may refuse to accept a plea of guilty and shall not accept the plea of guilty without first determining that the plea is voluntary with an understanding of the charge.

(3) (a) A plea bargain agreement IS AN AGREEMENT between a defendant and a prosecutor ~~is an agreement~~ that in exchange for a particular plea the prosecutor will recommend to the court a particular sentence. A judge may not participate in the making of, and is not bound by, a plea bargain agreement. If a judge does not impose a sentence recommended by a prosecutor pursuant to a plea bargain agreement, the judge is not required to allow the defendant to withdraw a plea of guilty.

(b) Before a judge accepts a plea of guilty, he must advise the defendant:

(I) of all the provisions of subsection (3)(a);

(II) OF THE PUNISHMENT AS SET FORTH BY STATUTE FOR THE CRIME CHARGED;

(III) THAT PRIOR TO ENTERING A PLEA OF GUILTY, THE

DEFENDANT AND HIS COUNSEL SHOULD HAVE CAREFULLY REVIEWED TITLE 46, CHAPTER 18, AND CONSIDERED THE MOST SEVERE SENTENCE THAT CAN BE IMPOSED FOR A PARTICULAR CRIME; and

(IV) that ~~he~~ THE JUDGE may impose any sentence allowed by law."

Section 3. Section 46-13-201, MCA, is amended to read:

"46-13-201. Dismissal at instance of court or prosecution. (1) The court may, either on its own motion or upon the application of the attorney prosecuting and in furtherance of justice, order ~~an action,~~ a complaint, information, or indictment to be dismissed; however, the court may not order a dismissal of a complaint, information, or indictment, or a count contained therein, charging a felony, unless good cause for dismissal is shown. ~~The~~ and the reasons ~~of~~ for the dismissal ~~must be~~ are set forth in an order entered upon the minutes. ~~A plea bargain agreement is not by itself good cause for a dismissal.~~

(2) The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed if a defendant whose trial has not been postponed upon his application is not brought to trial within 6 months after entry of plea upon a complaint, information, or indictment charging a misdemeanor.

(3) An order for the dismissal of an action as provided in this chapter is a bar to any other prosecution

for the same offense if it is a misdemeanor, but it is not a bar if the offense is a felony."

-End-